

# Memorandum



Date: September 18, 2007

To: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

From: George M. Burgess  
County Manager

Agenda Item No. 8(A)(1)(A)

Subject: Award Recommendation-RFP for Operation of Public Parking Facilities at MIA  
RFP No. MDAD-02-06

## **RECOMMENDATION**

It is recommended that the Board approve the award of a Non-Exclusive Management Agreement ("Agreement") for the operation of the public parking facilities at Miami International Airport ("MIA") to Airport Parking Associates ("APA"), and authorize the Mayor or his designee to execute the Agreement attached hereto, with the exhibits on file with the Clerk of the Board and to exercise any cancellation termination or renewal provisions contained therein.

## **SCOPE**

The services to be performed will be located within Commission District 6, however the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

## **FISCAL IMPACT/FUNDING SOURCE**

This project generates revenue for the Miami-Dade Aviation Department ("MDAD"). The Management Agreement is estimated to be \$31,135,000 (based on previous budgets) for a five (5) year term, including a monthly management fee ("MMF") of \$8,250.

## **TRACK RECORD/MONITOR**

The recommended firm APA under the existing Management Agreement has been satisfactorily providing the service at Miami International Airport. The new Management Agreement will be monitored by Patricia Ryan, Division Director, Commercial Operations.

## **BACKGROUND**

Request for Proposals No. MDAD-02-06 ("RFP"), for Operation of Public Parking Facilities at MIA was advertised on September 19, 2006.

A Small Business Enterprise ("SBE") selection factor was established for the RFP. One (1) firm out of the four (4) proposers, Standard Parking/AAA Parking, requested SBE consideration. However, the Department of Business Development ("DBD") found Standard Parking/AAA Parking was not properly certified to receive SBE certification.

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Responses were received from the following:

- Airport Parking Associates
- Standard Parking/AAA Parking
- Ampco System Parking
- Five Star Parking

The Evaluation/Selection Committee ("Committee") met and reviewed proposals submitted by the four (4) proposers, and heard presentations from the submitting firms. The Committee recommended negotiations with the highest ranked firm which was APA.

The Negotiation Committee successfully completed negotiations on December 22, 2006, with APA. Subsequently, based upon anonymous allegations received by MDAD, in March 2007, MDAD requested the Office of the Inspector General ("OIG") to review the allegations against APA. On May 10, 2007, the OIG issued preliminary findings and identified certain potential problems with the draft agreement. These included:

- Permitting some expense reimbursement based on estimates rather than actual expenditures supported by receipts or other third-party documentation;
- Allowing reimbursement of 401(k) plan expenditures at 2.5% of total gross salaries, instead of the actual monthly cost of plan participation; and
- Reimbursing expenditures for workers compensation and general liability insurance based on documentation that does not clearly indicate the actual premiums and coverage attributable to operations at Miami International Airport.

MDAD addressed those specific areas, and also included a provision for restitution and resolution of any related disputes if APA is found by an audit or investigation conducted by a governmental agency to owe money to the Department. If APA disputes these findings, it must file a notice of dispute with MDAD within thirty days, place the monies in an escrow account of MDAD's choosing, and both parties submit to binding dispute resolution within sixty days of the filing of the notice of dispute.

The Negotiation Committee met with APA through a publicly advertised meeting on June 25, 2007, to discuss the revisions to the Agreement. The Negotiation Committee and APA agreed to review revisions of the language while adhering to the OIG's recommendations.

PROJECT:	Operation of Public Parking Facilities at MIA
PROJECT NO.	RFP No. MDAD-02-06
USING AGENCY:	Miami-Dade Aviation Department
COMPANY NAME:	Airport Parking Associates Joint Venture (Consisting of Central Parking System of Florida and WRP & Associates)

COMPANY PRINCIPAL(S): James H. Bond, President Central Parking System of Florida, Inc. ("CPS") and William R. Perry III, President, WRP & Associates ("WPA")

LOCATION OF COMPANY: 2 South Biscayne Blvd., Suite 200  
Miami, Florida 33131

GENDER, ETHNICITY &  
OWNERSHIP BREAKDOWN: Central Parking System of Florida, Inc. (CPS has 51% in APA).  
WRP & Associates (WRP has 49% in APA).

HOW LONG IN BUSINESS: Ten (10) years

CONTRACT MEASURE: The contract measure established was a Small Business  
Enterprise Selection Factor.

CONTRACT MEASURE  
ACHIEVED: None

PREVIOUS AGREEMENTS  
WITH THE COUNTY WITHIN  
THE LAST FIVE (5) YEARS Miami-Dade Aviation Department - APA  
Jackson Public Health Trust - CPS  
Park and Recreation Department - CPS

AMOUNT OF  
AGREEMENT: The Management Agreement is estimated to be \$31,135,000  
(based on previous budgets) for a five (5) year term, which  
includes a monthly management fee of \$8,250. The MMF will be  
payable upon billing by the Operator in accordance with Sub-  
Article 4.02 of the Agreement. Payments for any partial month of  
service shall be prorated. At the end of the Agreement but during  
any renewal period, MDAD may increase the MMF by a  
percentage amount up to the percentage change in the Consumer  
Price Index ("CPI") for the Miami area for the past twelve (12)  
month period.

TERM OF AGREEMENT: Five (5) years

OPTION(S) TO RENEW: Five (5) additional one (1) year terms.

  
Assistant County Manager

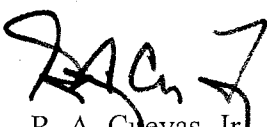


# MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

DATE: September 18, 2007

FROM:   
R. A. Cuevas, Jr.  
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(A)(1)(A)  
09-18-07

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION RELATING TO OPERATION OF PUBLIC  
PARKING FACILITIES AT MIAMI INTERNATIONAL  
AIRPORT; AND AUTHORIZING AWARD AND  
EXECUTION OF NONEXCLUSIVE MANAGEMENT  
AGREEMENT WITH AIRPORT PARKING ASSOCIATES  
FOR FIVE YEAR PERIOD**

**WHEREAS**, this Board desires to meet this need and accomplish the purposes outlined in the accompanying memorandum and documents, which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that the Board authorizes: (i) the award and execution of the Nonexclusive Management Agreement for the Operation of the Public Parking Facilities at Miami International Airport (the "Agreement"), with Central Parking System of Florida, Inc. and WRP & Associates, Inc., doing business as Airport Parking Associates ("APA"), for a five (5) year term, with the County's right to extend the Agreement for an additional five (5) years in one (1) year increments (the maximum term of the Agreement with extensions not to exceed ten (10) years); and (ii) the Mayor or designee to execute the Agreement, and exercise or enforce any provision of the Agreement including cancellation provisions contained therein.

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The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 18<sup>th</sup> day of September, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

David Stephen Hope

dsh

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**NON-EXCLUSIVE MANAGEMENT AGREEMENT  
FOR THE OPERATION OF PUBLIC PARKING  
FACILITIES  
MIAMI INTERNATIONAL AIRPORT**

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made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the  
year Two Thousand and Seven

**Between the County:**

**Miami-Dade County Florida**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the "County", which shall include its officials, successors, legal representatives, and assigns.

**And the Operator:**

**Airport Parking Associates  
2 South Biscayne Boulevard, Suite 200  
Miami, Florida 33131  
Phone (305)372-5151 Fax: 305)374-8271  
(312-988-3370) Facsimile**

Which term shall include its officers, partners, employees, successors, legal representatives, and assigns.

**Description of the Project:**

Miami-Dade County (the "County"), as represented by the Miami-Dade Aviation Department ("MDAD", is seeking one (1) Management Agreement for the operation of all Public Parking Facilities at Miami International Airport.

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## NONEXCLUSIVE MANAGEMENT AGREEMENT

### FOR THE OPERATION OF THE PUBLIC PARKING FACILITIES AT MIAMI INTERNATIONAL AIRPORT

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THIS NONEXCLUSIVE MANAGEMENT AGREEMENT, (the "Agreement"), made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **Board of County Commissioners of Miami-Dade County, Florida** (the "County"), a political subdivision of the State of Florida, and **Airport Parking Associates**, a Tennessee General Partnership authorized to do business in the State of Florida (the "Operator" or "APA").

### WITNESSETH:

NOW, THEREFORE, for and in consideration of mutual covenants herein contained, the parties hereto agree as follows:

### DEFINITIONS

- **AGREEMENT:** This written agreement between the Owner and the Operator, including the appendices attached hereto and all Amendments.
- **AMENDMENT:** A written modification to this Agreement executed by the Operator and the Owner covering changes, additions, or reductions in the terms of this Agreement.
- **ANNUAL OPERATING BUDGET:** The projections of the Operator as to monthly and annual totals for revenues and expenses for each major financial account and line item, each distinct group of revenue and expense centers, and individual operating units including estimated requirements of overtime and operational contingencies, equipment acquisitions, and the proper distribution of overhead and operator compensation to individual centers and units. **DAYS:** Reference made to days shall mean consecutive calendar days.
- **ARTICLE:** The article section contained in the Nonexclusive Management Agreement.
- **CODE:** The Code of Miami-Dade County, Florida.
- **CONTRACTOR:** An independent firm, company, joint venture, corporation, partnership, or individual under contract with and compensated by the Operator to perform a portion of the Services required hereunder.
- **DEPARTMENT:** Miami-Dade Aviation Department ("MDAD"), which is a department of Miami- Dade County and represented by and acting through its Director or his/her designee(s).

- **DIRECTOR:** The Director of the Miami-Dade Aviation Department or authorized representative(s) designated in writing with respect to a specific matter(s) concerning the Services.
- **EQUAL EMPLOYMENT OPPORTUNITY:** Opportunity provided by the Consultant pursuant to Executive Order 11246, as amended, and required to be part of contracts covered by said Executive Order.
- **FISCAL YEAR:** The period of time which commences on October 1st of a particular year and concludes on September 30th of the ensuing year.
- **FACILITIES MANAGER:** The full-time, on site management representative of the Operator.
- **GROSS REVENUES:** All monies, paid or payable to the Operator for transactions made and for services rendered by the Operator in the operation of the Facilities, regardless of (i) when or where the services are rendered, (ii) whether paid or unpaid, or (iii) whether on a cash or credit basis.
- **ILLEGALITY:** An unlawful act or violation of a law, statute, or ordinance, which exposes the Operator to criminal penalty and/or fine.
- **IMPROPRIETY or MISCONDUCT:** The dereliction of duty, mismanagement, or performance of a forbidden, improper, or dishonest act.
- **MISSING TICKET:** A parking ticket for which transaction data has been recorded on the cash register journal tape or other media, but which cannot be accounted for by the Operator.
- **MONTHLY MANAGEMENT FEE:** The total dollar amount to be paid per month by the County to the Operator for the management and operation of the Facilities as stated in Sub-Article 4.01 and in accordance with the terms and conditions of the proposal documents.
- **OWNER:** Miami-Dade County acting through its Board of County Commissioners (the "Board").
- **PROJECT MANAGER:** The person designated by the Department to administer the terms and conditions of the contract documents on behalf of the County.
- **REIMBURSABLE EXPENSES:** All operating budget expenses incurred by the Operator in the operation of the Facilities, as well as all other expenses not provided for in the budget, but which are specifically approved by the Project Manager, or his/her designatee, in writing.
- **RELATED PARTIES:** The Operator, or any entity which has direct or indirect ownership interest in the Operator, or any entity in which the Operator has a direct or indirect ownership interest.
- **REQUEST FOR PROPOSAL:** The RFP No. MDAD 02-06, and all associated addenda, exhibits, forms, affidavits and attachments.

- SERVICES: Those services that the Operator shall perform in accordance with the terms of this Agreement as directed and authorized in writing by the Owner.
- SUB-ARTICLE: The subarticle section contained in the Nonexclusive Management Agreement.

## **ARTICLE 1**

### **Term and Facilities**

#### **1.01 Term:**

The County hereby engages the Operator and the Operator hereby agrees to manage, operate and maintain the public parking facilities of the County located at Miami International Airport (the "Airport" or "MIA"), as described in Sub-Article 1.03 and commencing October 1, 2007, for an initial term of five (5) years (the "Term").

#### **1.02 Extensions:**

This Agreement may be extended at the sole discretion of the Department for a maximum of five (5) additional one (1) year terms (the "Extension Period"), given no existing event of default. Each Extension Period shall be exercised by the Department providing notice of said extension to the Operator, no later than one hundred twenty-one (121) days prior to the expiration date of the Agreement or the applicable Extension Period. In the event the Department does not give notice, this Agreement shall terminate accordingly. The Operator may, within thirty (30) days following the receipt of notice from the Department reject any such extension by written notice to the Department and, if so rejected, this Agreement shall terminate at the end of the initial term, or upon the termination of any extension thereof as appropriate. Failure of the Operator to respond to the Department within the thirty (30) day notice period shall automatically constitute acceptance of the extension.

#### **1.03 Facilities:**

The Department hereby makes available to the Operator for management and operation certain public parking facilities located at the Terminal Building area of Miami International Airport (the "Facilities").

The Facilities, as shown on Exhibit H, attached hereto shall encompass the: (i) multi-level structures designated as Short Term Parking, Dolphin Garage, and Flamingo Garage; (ii) high vehicle parking area; (iii) Central Collection Plaza; (iv) revenue control devices; and (v) entrances, exits; (vi) taxicab lot; (vii) remote parking, office space, which includes the furniture, fixtures and equipment contained therein or subsequently acquired, title to which is and shall remain in the County. No furniture, fixtures or equipment shall be removed from the Facilities without prior written approval of the Department. The Department

reserves the right without liability to the Operator or any related third party, to alter, change, modify, move or close all or any portion of the Facilities for economics, refurbishment, modification, expansion, renovation, improvement or repair. The Department may add new or additional facilities or delete existing facilities from this Agreement and may award same under separate agreements to third parties. Any such modifications, additions, or deletions to the Facilities shall be noted herein by providing a revised Exhibit H to the Operator. Neither, the modification, addition, or deletion of Facilities shall change the method to calculating compensation due the Operator pursuant to Sub-Article 4.02.

1.04 **Other Facilities:**

During the initial term of this Agreement or any Extension Period, the Operator shall not own, manage or operate a public parking facility within five (5) miles of the Airport, without the prior written approval from the Department.

**ARTICLE 2**  
**Scope of Services**

2.01 **Services – General:**

The Operator, on a twenty-four (24) hour basis shall: (i) operate and maintain the Facilities in a neat, clean, and operable condition; (ii) provide, operate, and maintain the necessary equipment, trained personnel, and vehicles for battery assistance and lost vehicle searches; and (iii) perform security vehicle inspections, and other appropriate patron assistance for vehicles parked in the Facilities. The Operator shall provide such services as needed or desirable to control cost and expenditures, increase and develop Gross Revenues and net income (yield).

2.02 **Operator Duties:**

Collection procedures for accounts receivable transactions include, but are not limited to, attempts to reach the customer by telephone and demand payment letters sent by registered mail to the customer by the Operator at intervals of ten (10), thirty (30), and forty-five (45) days from the transaction dates as required in MIA Operational Directive No. 04-05 and the Parking Procedures Manual (Sub-Article 7.03).

All collected parking revenue is to be presented to the Department in the Monthly Revenue/Expense Report as Gross Parking Revenues with line-item reductions for application taxes and counterfeit money. Copies of the bank advice verifying the counterfeit money status must accompany the Report.

There will be no charge against Operator for accounts receivable amounts resulting from customer non-sufficient funds where Operator has followed agreed procedures, and documented same.

**2.03 Valet Parking:**

The Department shall have the right to require a departure valet service be offered by the Operator, in which event all cost of the operation of such departure valet service shall be made part of the budget. In such event, Operator shall obtain Garage Keeper's Legal Liability Insurance ("GKLL") with a limit of at least \$1,000,000 (the premium for which will be a Reimbursable Expense). Pursuant to Article 13, the Operator shall pay and be financially responsible for any deductible payment associated with a GKLL claim, where either the MDAD Risk Management, Miami-Dade Police Department, or GKLL insurance carrier, determine that said claim was the result of Operator fault. Regular established fees and special valet service fees, as established by the County, shall be charged departure service valet customers and shall be included in Gross Revenue.

The Department shall have further right to utilize its own employees or engage another operator to provide said valet service at the Facilities, independent of this Agreement. In such event, the revenue from such valet parking operation shall not be included as Gross Revenue under this Agreement.

**2.04 Additional Parking Services:**

The Department shall have the right to require that additional parking facilities be operated by the Operator, in which event, all cost of the operation for such service shall be made part of the budget, and all revenues there from shall be included in Gross Revenues. Operations of additional parking facilities may include the providing of surface transportation between remote areas and the main Terminal Building.

The Department shall have the further right to utilize its own employees or engage another operator to operate such facilities independent of this Agreement. In such event the revenues from such additional parking facilities shall not be included in Gross Revenues under this Agreement.

**2.05 Missing Tickets:**

The Operator shall assume financial responsibility for all missing parking tickets. The maximum applicable short term, long term, or valet daily rate charged at any Airport parking facility will be charged to the Operator for each missing ticket. Said charge shall be deducted from the monthly compensation payable to the Operator.

**2.06 Cash Losses:**

All cash losses shall be the responsibility of, and be reimbursed by, the Operator. Cash losses shall include losses of debit and credit card media, vouchers and any other form of payment of Gross Revenues.



2.07 **Prompt Payment:**

The Operator shall be fully responsible for making prompt and timely payment of all obligations arising out of this Agreement, so as to maximize the potential for available discounts and commissions and so as to comply with the Florida Prompt Payment Act, Part VII of Chapter 218, Florida Statutes. All discounts, allowances, premiums and commissions paid or received hereunder, shall be to the credit and benefit of the County. The Operator shall pay from its own funds, any penalty, fine, like assessment, resulting from any late or delayed payment of an obligation hereunder.

**ARTICLE 3**  
**Revenues and Reports**

3.01 **Gross Revenues:**

All Gross Revenue generated from the operation of the Facilities under this Agreement shall accrue to the County. Monies payable shall include, but not be limited to, any and all cashier shortage differentials, overages and undercharges. Dishonored checks, uncollected insufficient funds amounts, and uncollectible credit card charges shall not be included in Gross Revenues provided that the collection procedures for such transactions, as specified in the Parking Procedures Manual (Sub-Article 7.03), incorporated by reference herein, are adhered to by the Operator. All Gross Revenues generated from the operations of the Facilities under this Agreement shall accrue to the County.

3.02 **Deposit of Gross Revenue:**

The Operator shall deposit all funds collected, in a revenue depository account of the County, in a bank or depository as designated by the Department in accordance with the Parking Procedures Manual (Sub-Article 7.03). Deposits of Gross Revenue shall comprise: (i) all funds collected in cash, personal checks, corporate checks, or traveler's checks; (ii) credit and debit card vouchers with direct credit to the County's revenue depository account; (iii) any other Department approved media; plus (iv) net cashier overages and undercharges. Daily deposits shall be made as soon as practical, but no later than the next banking day following receipt of the revenue transactions. Other deposits shall be composed of: (X) Gross Revenues received in the form of receivables, such as vouchers, when the same day or next day "electronic funds transfer" is not available; (Y) credit and debit card vouchers not under direct credit to the County's Revenue depository account; and (Z) other forms of receivables as shall be approved by the Department. Possession of the deposited funds shall be deemed the County's only when the Department has received the duplicate deposit slips, properly certified by a cashier or officer of the depository bank. Said validated deposit slips must be delivered to the Department on a daily basis, but not later than 11:30 a.m. following the execution of any revenue transaction.

All bank advice, pertaining, but not limited to, counterfeit money, dishonored checks, and deposit corrections, shall also be delivered to the Department in the same manner.

**3.03 Deposits and Receivables Procedures:**

Revenue deposits and receivables shall be processed in accordance with MIA Operational Directive No. 04-05 and the Parking Procedures Manual (Sub-Article 7.03), as approved by the Department, and in accordance with Sub-Article 3.04. The Operator shall actively pursue collection of all accounts receivables and shall remain responsible for those amounts until collected and deposited into the County's revenue depository account.

Except as provided for in Sub-Article 2.02, in the second month following the month of transaction, the difference (but not less than zero) of the balance of uncollected accounts receivable for that month of transactions, less ten percent (10%) of the total accounts receivable, shall be deducted from the monthly compensation payable to the Operator.

**3.04 Aged Accounts Reports and Bad Debt Adjustments:**

An account(s) receivable transaction is initiated by the completion of the insufficient funds form. The Operator shall prepare and maintain, on a weekly basis, accounts receivable listing which include the date, insufficient funds form number, customer name, vehicle license plate number, and balance due resulting from an insufficient funds transaction. Collection procedures for accounts receivable transactions must comply with MIA Operational Directive No. 04-05, Parking Procedures Manual (Sub-Article 7.03) and Sub-Article 2.02.

On annual basis, the certified reports, prepared in accordance with Sub-Article 3.06, shall include the actual bad debt experience factor for uncollectible accounts. Based upon such actual bad debt experience factor, an adjustment of the difference between the ten percent (10%) estimated allowance for uncollected accounts and the actual factor will be made in the month following the date of the certified reports. Such adjustments will be an additional payment to the Operator or a deduction from the monthly compensation payable to the Operator.

On an annual basis, the certified reports, prepared in accordance with Sub-Article 3.06, shall include the accounts receivable amounts which are uncollected due to the failure of the Operator to follow procedures as described in MIA Operational Directive No. 04-05 and established Parking Procedures Manual (Sub-Article 7.03). Such amounts shall not be included in the calculation of the actual bad debt factor but shall be the direct responsibility of the Operator for payment to the Department. The Department shall deduct such amounts from the monthly compensation payable to the Operator. This deduction shall be made in the month following the date of receipt of the certified reports.

3.05 **Customer Checks:**

Personal, corporate, and traveler's checks are to be accepted as payment for parking transactions. Cashiers are to obtain information from customers paying by check as required by the Parking Procedures Manual (Sub-Article 7.03). The Operator must have an electronic check verification system, approved by the Department, in place, and must comply with all required procedures. The Operator shall be responsible for the collection of dishonored checks. In the event of a dishonored check not covered by the electronic check verification company, immediately upon notification that a check has been returned, the Operator must make attempts to reach the customer by telephone and send demand payment letters in compliance with MIA Operational Directive No. 04-05 and the Parking Procedures Manual (Sub-Article 7.03). The Operator shall immediately upon receipt, remit directly to the Department's Finance Division amounts collected against dishonored checks, with information clearly indicating the invoice number, customer name and check number shown on the original check.

On an annual basis, the certified reports prepared in accordance with Sub-Article 3.07, shall include the determination of the total amount of dishonored checks for which procedures described herein, in MIA Operational Directive No. 04-05 and in the Parking Procedures Manual (Sub-Article 7.03) were not followed by the Operator. Based upon such calculations, the Department shall deduct such total amounts from the compensation payable to the Operator. The deduction shall be made the month following the date of receipt of the certified reports.

3.06 **Reports:**

The Operator shall submit reports in such form as the Department shall require. Such reports shall be described as to format, reporting period, and frequency of submission in the Parking Procedures Manual (Sub-Article 7.03). These reports shall be signed by the preparer and countersigned by the Facilities Manager or his/her designee (see Sub-Article 4.02).

Periodic report(s) discrepancies shall be reconciled by the Operator upon request by the Department.

The Operator shall prepare and submit to the Department on a monthly basis a Report of Missing Tickets indicating the transaction date, time, exit lane, cashier name, transaction number and amount collected.

The Department may add, delete, or modify required Operator submitted reports at any time, and require the Operator to provide other reports generated by the Operator in the normal course of operations.

3.07 **Annual Audit:**

As soon as practical, but no later than December 1st of each year of this Agreement, the Operator shall furnish: (i) an annual certified financial statement of all revenues and expenses; (ii) a letter certifying compliance with the terms of

this Agreement; and (iii) a management letter resulting from the review of operations, and internal controls. Such financial statement, compliance letter and management letter must be prepared and attested to by an independent certified public accountant, licensed in the State of Florida, and acceptable to the Department. The financial statement shall be prepared in accordance with the American Institute of Certified Public Accountant's Statement on Auditing Standards – Special Reports, as well as generally accepted standards, and shall contain an unqualified opinion on the Gross Revenues and Reimbursable Expenses as defined by the terms of this Agreement. In addition to the annual audit requirement, the Department may require special audits of all, or selected, operations performed by the Operator under the terms of this Agreement. Such special audits shall be conducted in accordance with the requirements established by the Department. The cost of such special audits shall be a reimbursable expense payable by the department except as noted in Sub-Article 3.09.

**3.08 Right to Audit:**

The Department, Audit Management Services of the County, external auditing firm(s) approved by the Department, and federal and state auditing personnel, shall be permitted to audit, examine, review and copy all records relating to operations under this Agreement, during the initial term of this Agreement and for a period of three (3) years after the end of the initial term or any Extension Period of this Agreement.

**3.09 Missing Ticket Audit:**

The Department designated personnel will perform spot audits to verify the Monthly Report of Missing Tickets. Should such an audit reveal a discrepancy of greater than one percent (1%) of the audit sample, between the number of missing tickets reported by the Operator and the number found missing by the audit, the Department may require a special audit on this phase of the parking operation. Should such a special audit be conducted, the Operator shall pay the Department the costs of the audit.

**3.10 Records:**

The Operator shall maintain, during the term of this Agreement, all books of accounts and records of Gross Revenues and Reimbursable Expenses in conformance with generally accepted accounting principles ("GAAP").

All source records of Gross Revenues, which shall include but not be limited to, parking tickets, exception forms, cash register tapes, journal of printouts, daily revenue reports, and employee time cards, shall remain at all times within Miami-Dade County. These records shall be maintained by the Operator for a period of one (1) year, and then delivered to the Department.

Upon ten (10) days written notice from the Department, the Operator shall deliver to the Department, any original documents and records pertaining to the operation of the Facilities at Miami International Airport, not required by the terms of this Agreement to be maintained within Miami-Dade County. Such rights to require delivery of original documents and records not maintained in Miami-Dade County shall extend for a period of up to three (3) years after the date of termination of this Agreement. In the event it becomes necessary to audit books and records in a location outside of Miami-Dade County, all travel related expenses resulting from such an audit shall be reimbursed by the Operator within thirty (30) days of invoicing by the Department.

3.11 **Annual Operating Budget:**

Annually, on the date selected by the Department, the Operator shall submit to the Department an Annual Operating Budget, for the next County Fiscal Year. The Annual Operating Budget is to be prepared in accordance with instructions from the Department. Said budget is subject to approval by the Department, and shall be used by the Department in preparing its annual budget for the year.

The Annual Operating Budget shall be presented in a monthly format, in total and by operating unit with comparisons to the prior year and current year budget and actual. The Annual Operating Budget shall include a detailed listing of recommended staffing for the Facilities, wage rate and other employee expenses information.

The Operator shall submit a written narrative explaining the basis and assumptions used in preparing said budget, such as but not limited to, the opening and closing of operating units, recommended new services, cost of products and labor, and Airport passenger traffic.

The Operator, in making the expenditures hereunder, shall not exceed the annually approved expenditure percentages and ratios for each line item, without the prior approval of the Department. In the event the Operator is required to make expenditures in excess of the amount included in the monthly increment of the approved Annual Operating Budget, because of emergencies or operational necessity, and provided such expenditures are reasonable and otherwise reimbursable hereunder, the Operator shall request approval from the Department prior to making such expenditures. The budget may be modified during any contract year, at the direction of, and through written approval of the Director or his/her designee.

3.12 **Monthly Proforma Budget:**

On the twentieth (20th) day of each month, the Operator shall submit a monthly proforma budget on a form(s) provided by the Department, listing the Monthly Management Fee and all projected Reimbursable Expenses, including types,

quantities and estimated costs, required through the end of the following month. The Department shall approve or disapprove, all or portions of the categories for expenses or individual items contained in the monthly budget. Only expenses approved by the Department may be reimbursed to the Operator. Changes made to the monthly budget shall require prior written approval of the Department. As part of the monthly budget, the Operator will include the projected number of eight (8) hour cashier shifts separated by day, shift, and location.

**3.13 Restitution to the Department:**

If at any time, the Operator is found by an audit or investigation conducted by a governmental agency to owe money to the Department, the Operator shall refund the amount due or file a notice of dispute with the Department (the "Notice of Dispute"), within thirty (30) calendar days of notice of said finding. Concurrent with the Operator's timely filing of the Notice of Dispute, the Operator shall place the disputed sum in an escrow account named by the Department, pending binding dispute resolution to be held within sixty (60) days of the Notice of Dispute conducted by the American Arbitration Association, or such other independent third-party agreed to by the parties. Failure to do so will be an Event of Default pursuant to Sub-Article 17.01.

The parties agree that the decision reached through binding dispute resolution is final as to the disputed sum, and is non-appealable. Operator agrees that failure to file a timely Notice of Dispute, waives its right to dispute said sum, and Operator must refund such amount to the Department immediately.

**ARTICLE 4**

**Compensation and Reimbursement to Operator**

**4.01 Monthly Management Fee:**

The Operator shall be paid by the County, for the Services performed pursuant to Article 2 of this Agreement, a fixed Monthly Management Fee of Eight Thousand Two Hundred and Fifty Dollars (\$8,250) (the "MMF"). Said fee will be payable upon billing by the Operator in accordance with Sub-Article 4.02 hereof. Payments for any partial month of service shall be prorated. At the end of the five (5) year term of this Agreement, for application during any Extension Period, the Department may increase the amount of Monthly Management Fee by a percentage amount up to the percentage change in the Consumer Price Index ("CPI") for the Miami area for the past twelve (12) month period.

**4.02 Reimbursable Expenses:**

On a monthly basis, the Operator shall submit to the Department the Monthly Revenue and Expense Report, certified by an officer of the Operator and in the format specified in the Parking Procedures Manual (Sub-Article 7.03), for review

and approval by the Department and payment thereof. This report serves as a summary of the monthly Parking Revenue and Reimbursable Expenses, and as a monthly invoice to the Department from the Operator. The use of estimates to substantiate monthly revenues and expenses will be prohibited.

The Reimbursable Expenses are to be presented in the Monthly Revenue and Expense Report, as directed in the Parking Procedures Manual (Sub-Article 7.03), accompanied by the original invoice(s) and supporting documentation. Inter-company or intra-company communications shall not be included as a Reimbursable Expense.

Reproduced invoices shall not be accepted by the Department, and subject the Operator to non-reimbursement. Billing of the Monthly Management Fee shall include a statement from the Operator indicating on a weekly basis, the actual number of eight (8) hour cashier shifts during the month.

The Project Manager shall have the right to verify the amounts claimed on the Monthly Revenue and Expense Report. If any item of an expense is disputed or contested by the Department, the Department shall submit to the Operator, a statement, in writing, setting forth the item(s) being disputed and the specific reasons thereof. The Department shall not withhold payment for non-disputed Reimbursable Expenses. Both parties shall, in good faith, diligently pursue clarification and resolution of any disputed item within thirty (30) days of written notice sent by the Department.

4.03 **Non-Reimbursable Expenses:**

The Operator shall not be reimbursed for the following types of expenses:

- (A) Overhead and cost allocations.
- (B) Legal and accounting fees, provided however, legal fees incurred in actions in which the County is at interest may be reimbursable, if approved in writing in advance by the Department.
- (C) Charitable and political contributions.
- (D) Travel and entertainment.
- (E) Public relations, gifts, dues and memberships.
- (F) Any penalties, assessments or fines issued by any court or authorized government entity or agency.
- (G) Employee social functions.

- (H) Employee severance pay, and the cost of fringe benefits not earned or accrued during the time of this Agreement or while the employee has worked for the Operator other than at the Facilities.
- (I) Charge-backs which resulted from the failure to apply controls as described in the Parking Procedures Manual (Sub-Article 7.03).

4.04 **Related Party Purchases and Services:**

The Operator shall not be reimbursed for the purchase of products or services, which would otherwise constitute a Reimbursable Expense hereunder, if such purchase has been from a Related Party, unless such proposed purchase(s) have been fully disclosed by the Operator to the Department in writing prior to the purchase, and written approval has been given by the Department to the Operator.

4.05 **Timely Payment:**

All payments required to be made to the Operator by the County, hereunder shall be due and payable in accordance with the guidelines of the Florida Prompt Payment Act, Part VII of Chapter 218, Florida Statutes. The County may withhold payment of those portions of billings from the Operator which are in question or dispute. The Department shall advise the Operator, in writing of any such questioned or disputed portions of the billing within the guidelines and timeframes of the relevant statutory or contractual period, and shall remit the undisputed balance as provided for herein.

4.06 **Retirement Contributions:**

The Operator shall be reimbursed by the Department for the cost of its retirement program using the following methodology:

On a monthly basis APA shall bill for retirement expense the employer contribution, as supported by a detailed summary generated from the company payroll system (report to contain employee name, last four (4) digits of social security number and amount per pay period contributed by APA.. The data will be consolidated into an excel spreadsheet that will detail by home lot number the total employer contribution per pay period for the month that ties to the monthly management report submitted to MDAD for reimbursement.

APA shall also bill MDAD, on a quarterly basis but in a frequency not greater than the actual billing cycle of its retirement plan administrator, for Miami International Airport's pro-rata portion of the retirement plan's total cost. MDAD's portion shall be applied as a percent of the total employer contribution, with the numerator being the amount of employer contribution for APA employees at Miami International Airport, and the denominator being the total employer contribution amount for the same period. This resulting percentage



shall be multiplied by the total billed amount by the plan administrator for the same billing period and shall be treated as MDAD's pro-rata portion of the administrative expense associated with the retirement program.

## **ARTICLE 5**

### **Personnel**

#### **5.01 Facilities Manager:**

The Operator shall provide a Facilities Manager, responsible for the competent performance and fulfillment of the responsibilities of the Operator under this Agreement. The Facilities Manager shall be qualified and experienced in parking facilities management and operations, with similar responsibilities for a comparably sized similar operation, or an equivalent approved by the Department. The Facilities Manager shall have no other duties or responsibilities other than day-to-day management of the Facilities at Miami International Airport. The Facilities Manager shall, at all times, be subject to approval by the Department, if different than the Facilities Manager named in the Proposal. The Department shall have the right at its discretion to require the Operator to replace the Facilities Manager without cause. Vacations and extended absences to be taken by the Facilities Manager shall, at all times, subject to the prior approval of both the Operator and the Department.

#### **5.02 Personnel:**

By written notification to the Operator, the Department reserves the right to (i) increase or decrease the number of employees utilized by the Operator in each shift, (ii) increase or decrease the number of shifts required per day, or (iii) change the hours of each shift.

#### **5.03 Personnel Employment:**

Pursuant to the terms of this Agreement, the Operator shall manage and operate the Facilities at the Airport, and shall employ all on-site personnel, as authorized or directed by the Department, required for the complete performance of this Agreement.

#### **5.04 Personnel Standards:**

The Operator shall properly control its employees, who shall present a clean, neat, well-groomed and professional appearance at all times, and discharge their duties in a cooperative, courteous and efficient manner. Satisfactory maintenance of these requirements shall be the basis for continued employment of all employees of the Operator hereunder. The Operator shall require all personnel, except non-public contact and managerial employees, to wear visibly on their person, at all times while on duty, a distinctive name tag identifying the individual by name, as

an employee of the Operator and if appropriate, displaying an employee number or title.

The Operator shall also require all personnel to wear visibly, on their person, at all times while on duty, an identification badge issued by the Department, which shall be returned to the Department when employees cease work for the Operator or, upon termination of this Agreement. The Operator shall ensure at all times that the names of on-duty cashier personnel are properly displayed at the exit booths so as to be readily visible and readable by drivers of exiting vehicles, while stopped at such exit booths.

The Operator shall require all its personnel, except non-public contact and managerial employees, to be properly uniformed. The design and color of such uniforms are to be approved in advance by the Department.

Shift supervisors shall be full-time, on-site employees of the Operator and shall be responsible for supervising work performed and on-the-job training of employees.

**5.05 Employment Related Examinations:**

All prospective employees of the Operator at the Facilities, including the Facilities Manager, shall agree, in writing to any testing as allowable by law. The Department shall have the right to require that the Operator use properly validated and lawful tests and procedures, including criminal background checks, as a pre-employment screening mechanism for all, or designated classifications of employees to assist the Operator in determining the accuracy of employment applications and the integrity of employment applications. Summaries of said results shall be simultaneously forwarded directly to the Project Manager and the Operator's Facilities Manager for review. Prospective employees who admit guilt or indicate deception to the specific questions supplied by the County shall not be employed, and shall be subject to any applicable law. Current employees, who admit guilt or indicate deception to the specific questions supplied by the County, are subject to termination and prosecution as allowable by law. Employees must agree in writing, prior to employment, to answer detailed questions relating to their personal finances and the receipt, handling, and theft of cash at the Facilities.

In addition, the Department may require the Operator to have polygraph examinations administered at individual instances, fully in compliance with the requirements and limitations of federal and state laws.

**5.06 Tips and Gratuities:**

No employee of the Operator shall be permitted, directly or indirectly, to solicit tips or request any form of gratuity, but valet employees may accept tips offered by customers.

5.07 **Relationship of Parties:**

Officers, agents, employees, Contractors, consultants, suppliers, or vendors of the Operator are not employees of the County for any purpose whatsoever. There are NO third party beneficiaries of this Agreement.

5.08 **Language Requirements:**

The Operator shall ensure that all employees are able to understand and communicate in spoken and written English, and both English and Spanish must be spoken by at least one (1) employee at each customer contact area. The Operator shall utilize such tests or procedures satisfactory to MDAD necessary to ensure compliance with this provision.

5.09 **Time Clock:**

The Operator shall provide a recording type time clock for use by all hourly employees. The installed location of the time clock shall be subject to approval by the Department. The Operator shall require employees to clock in or out within a twenty (20) minutes span at shift change time, and not earlier than ten (10) minutes before or ten (10) minutes after the specified time. This time span is to assist shift change procedure, but does not obligate the Department for any payment for time in excess of a regular eight-hour shift.

5.10 **Wage Rates:**

All employees of the Operator shall be paid at rates not to exceed those established in the Annual Operating Budget approved by the Department without the prior written approval of the Department. The Operator shall not be reimbursed for payment to its employees of salaries at rates, which exceed that established in the budget approved by the Department.

5.11 **Alcohol and Drug Testing:**

The Operator acknowledges that the County has the obligation to establish a drug free workplace, and to establish policies and programs to ensure Airport safety and security. The Operator acknowledges that the Department has the right to require users of the Airport, including but not limited to lessees, permittees, licensees, and management companies, to establish reasonable programs to further the achievement of the obligations described herein. Accordingly, the Operator shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport and for the same or similar screening, based upon reasonable suspicion that an employee, while on duty at the Airport, may be under the influence of alcohol or drugs. Further, to the extent permitted by law, the Operator shall establish a program for the random alcohol and drug screening of all employees who are authorized, pursuant to this Agreement, to operate any type or kind of vehicle on the airfield operations area

("AOA"). The Operator shall make good faith efforts to negotiate amendments to any existing contract(s), which may serve as a bar to the Operator's implementation of its obligations hereunder. Notwithstanding the above, the Operator specifically acknowledges that the Department has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person whom it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

5.12 **Employee Training:**

The Operator shall, on an ongoing basis, provide effective customer service training programs for all personnel having public contact.

5.13 **Federal Agencies Right to Consent:**

The Operator understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various federal inspection services ("FIS") agencies may be subject to the consent and approval of such agencies and any bonding requirements as may be imposed by such agencies. Persons not approved or consented to by FIS may not be employed by the Operator on the Airport.

5.14 **Use of Public Facilities:**

The Operator acknowledges and agrees that the County has provided certain facilities, such as, but not limited to, seating areas, holdrooms and restrooms in the Terminal Building, public parking and other conveniences for the use of the traveling public and has also provided special facilities solely for the use of the employees of Airport tenants and commercial users. The Operator shall not permit its employees to use the public areas provided by the County for use by the traveling public, except those employees normally required to be in contact with the traveling public, those providing passenger services and those doing so as part of regular assigned duties.

5.15 **Passenger Referrals:**

The Operator shall not permit its employees to enter into any agreements, understanding, arrangements or contracts, whether written or oral, relative to the referral of passengers and other Airport users to hotels, restaurant, shops or services off the Airport. The acceptance by an employee of any form of compensation, whether in cash or in kind, from and of airport enterprise and the possession of referral cards for such enterprises shall be *prima facie* evidence of a violation of this provision.

5.16 **Employee Covenants Violations:**

In the event the Operator violates the covenants in Sub-Article 5.14 or Sub-Article 5.15 above for failure to properly control its employees or by permitting its employees to improperly use facilities provided by the County for the use and

convenience of the traveling public, the Department shall have the right to (i) confiscate the employee's Airport identification, (ii) require the Operator to terminate from employment at the Airport those employees who have individually violated the covenants of Sub-Article 5.14 and/or Sub-Article 5.15, and (iii) take action pursuant to Article 17 hereof.

## **ARTICLE 6**

### **General Provisions**

#### **6.01 Standards of Operations:**

The Department shall have the exclusive right to approve, establish and revise the parking rates, hours of operation for individual units, and the standards for the type and quality of service, maintenance of the Facilities and other matters pertaining to operations and procedures under this Agreement. The Operator shall periodically make recommendations concerning these matters to the Department; however, the decision of the Department shall be final.

#### **6.02 Customer Charges:**

Except as may otherwise be specifically authorized in writing, the Operator shall charge all users of the Facilities the fees or rates for such use established by the County. If the Operator charges any amount in excess of the established rates, the amount by which the amount charged differs from the established rates shall constitute an overcharge, which shall be refunded to the customer, if possible. If not refunded, the overcharge shall be included in the Gross Revenues. If the Operator or its employees charge any amount which is less than the established rates, the amount by which the amount charged differs from the established rates shall constitute an undercharge and an amount equal to the undercharge differential shall also be included by the Operator in Gross Revenues in accordance with the Parking Procedures Manual (Sub-Article 7.03). The Operator shall provide for the periodic, regular recalculation of tickets for such period(s) of time as the Department may require.

#### **6.03 Injury or Damage:**

In the event of any injury to any person or loss or damage to any property in the Facilities, the Operator shall immediately notify the Department and promptly furnish copies of relevant reports in connection therewith.

#### **6.04 Consulting Assistance:**

The Department reserves the right to require the Operator to provide specialized consulting assistance and advice with regard to the operation and development of the Facilities, beyond that normally expected from the Operator under terms of this Agreement. Upon the direction of the Department, the Operator shall engage special consultants to assist in facility development, administrative procedures

and other matters related to the operation of the Facilities and all costs and expenses thereof shall be either a reimbursable operating expense or reimbursable capital expense hereunder. In such event, the travel expenses costs that may be incurred by the special consultants shall be considered an item of Reimbursable Operating Expense, subject to the travel expense limits as set forth in Miami-Dade County Administrative Order No. 6-1. All such travel shall be subject to prior written approval by the Department.

6.05 **Legal Services:**

The Operator shall not be reimbursed by the Department for any or other services with respect to employee relations matters applicable to employees of the Operator.

6.06 **Complaints:**

The Operator shall respond promptly and courteously to all complaints received and shall provide the Department with copies of all written complaints and the Operator's response thereto. Partial or full refunds in response to complaints, shall only be made in accordance with Department approved policies and procedures.

6.07 **Purchasing:**

The Operator shall solicit not less than three (3) informal bids or quotes for all purchases of goods and services (including insurance) used in the operation of the Facilities hereunder, unless waived by the Department in its sole discretion, and shall make such purchases from the vendor quoting/bidding the lowest amount, unless otherwise approved by the Department. The Operator shall maintain all quote information on file and provide to the Department such documentation of such bids/quotes as the Department may require.

6.08 **Contracts/Agreements:**

Any and all contracts or agreements to be entered into by the Operator, solely to support operations, hereunder shall be approved in advance by the Department and shall contain a provision that any such contracts or agreements shall be assignable, upon notice from the Department, to the County.

6.09 **Other Business Activity:**

The Operator and its employees shall conduct no other business activity within the Facilities of the Airport, except as specifically authorized herein.

6.10 **County Owned Vehicles**

The Operator shall lease at no charge, vehicles from the County, as shall be needed and used solely in connection with the provision of Services hereunder. Assigned vehicles shall be operated in accordance with County guidelines and

procedures (attached to Exhibit "County Vehicle Utilization Affidavit"). The Department shall be responsible for assignment, replacement, and maintaining the vehicles leased to the Operator, provided that: (i) the Operator assumes full responsibility (including repairs) of any damage to County-owned vehicles during use by the Operator, its employees, agents, contractors, subcontractors, or suppliers; (ii) MDAD authorizes and approves any repairs to be made prior to any repair to a County vehicle; and (iii) the Operator assumes full responsibility for any injury and/or damage caused by its drivers to persons or property while operating County-owned vehicles.

Within twenty (20) days of the date of this Agreement, the Operator shall provide to the MDAD Safety & Insurance Office a copy of each new and existing Florida driver's license of employees, agents, contractors, subcontractors, or suppliers who desire to drive County-owned vehicles.

## **ARTICLE 7**

### **Duties and Obligations of Operator**

#### **7.01 Maintenance:**

The Operator shall be responsible for the proper servicing and maintenance of all the revenue control equipment not specifically covered by a separate maintenance contract. Costs of a separate service and maintenance contract will be a Reimbursable Expense and shall be included in the Annual Operating Budget.

The Operator shall be responsible for keeping employee work area including exit tollbooths, and the office areas and restrooms in a neat and clean condition at all times.

#### **7.02 Procedures:**

The Operator shall be responsible for operation of the Facilities in accordance with the Parking Procedures Manual (Sub-Article 7.03). The Parking Procedures Manual (Sub-Article 7.03) may be amended at any time by the Department.

#### **7.03 Parking Procedures Manual:**

The Operator shall, within ninety (90) days following the date of this Agreement, revise the existing Parking Procedures Manual. The Parking Procedures Manual shall be subject to review and written approval by the Department. The Department maintains full discretion to determine necessary and appropriate procedures for the operation and management of the Facilities. The Operator shall comply with and shall not change any of the procedures of the Parking Procedures Manual without the written approval of the Department which approval may be withheld for any or no reason.

**7.04 Commodities and Equipment:**

The Operator may provide commodities and equipment authorized as part of the budget, with title to same being vested in the County upon delivery or installation at the Facilities. The Operator may provide at its cost and expense, subject to Department approval, all equipment and furnishings required for the offices, except that which is permanently installed or affixed to the premises. At termination of this Agreement, the Department may, at its option, purchase such equipment and furnishings provided by the Operator at their depreciated value, utilizing straight-line amortization over a ten (10) year period from the date of installation in the Facilities.

The Operator, on a twenty-four (24) hour basis shall: (i) operate and maintain the Facilities in a neat, clean, and operable condition; and (ii) provide, operate, and maintain the necessary equipment, trained personnel, and vehicles for battery assistance, lost vehicle searches, and other appropriate patron assistance for vehicles parked in the Facilities. The quantity, specifications and design of such equipment and vehicles shall be subject to approval of the Department.

**7.05 Operations:**

The Operator shall cause a physical inventory of all vehicles parked within the Facilities to be made and recorded daily, during the hours of midnight and 4:00 a.m. Such physical inventories shall be conducted in such manner as to record the date and general parking area where the vehicle parked in the Facilities, utilizing the equipment provided by the Department for such date gathering. The requirements of this paragraph may be adjusted by the Department at any time.

The Department may issue pre-paid parking passes for the use of the Facilities and establish rules and procedures relating to the use of such passes. The Department shall notify the Operator of such issuance in order that the Operator may process monthly billing. The revenue from such parking passes shall be included in the Gross Revenues.

The Operator shall cause the removal of the vehicles from the Facilities in accordance with the Parking Procedures Manual (Sub-Article 7.03). Any firm, company, business, or the like, providing vehicle removal and storage service must be approved in writing by the Department. All charges for such removal and storage must be approved by the Department and will be posted in an obvious and conspicuous location, visible to the public, within the office space provided to the Operator.

**ARTICLE 8**  
**Duties and Obligations of the County**

**8.01 Maintenance:**

Where applicable and necessary for the Operator's provision of services under this Agreement, the Department shall be responsible for the maintenance,



modification or replacement of the roofs and exteriors of the Facilities, in addition to the maintenance of fencing, paving, sidewalks and covered walkways, signs, interior and exterior lighting, landscaping, air conditioning, and the closed circuit television system.

The Department is responsible for maintenance, modification, or replacement of all revenue control equipment, except as Sub-Article 7.01 may apply.

8.02 **Utilities:**

The Department shall provide and pay for all utilities as a Reimbursable Expense item, except intra-company communications, which shall be at the sole cost of the Operator.

**ARTICLE 9**  
**Rights Reserved to the County**

9.01 **Rights Reserved to County:**

All rights not specifically granted the Operator by this Agreement are reserved to the County.

9.02 **Rights of County at Airport:**

The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Operator for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole active negligence of the County, its employees, or agents.

9.03 **Rights to be Exercised by Department:**

Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

9.04 **Right to Regulate:**

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Operator or its operations.

9.05 **Other County Rights:**

The Operator shall be liable for any physical damage caused to the Facilities by the Operator, its employees, agents, Contractors, subcontractors, vendors, or suppliers. The liability shall encompass: (i) the Operator's repair of the Facilities,

or if the Facilities cannot be repaired, payment to the County of the fair market value replacement cost of the Facilities; and (ii) any other such damages to the County or the Airport arising from the physical damage caused by the Operator. The County may also initiate an action for specific performance, injunctive relief, or any other cause(s) of action pursuant to applicable law.

## **ARTICLE 10**

### **Bonds**

#### **10.01 Performance Bond:**

Within twenty (20) days of the date of this Agreement, the Operator shall provide the County with an annually renewable performance bond which shall be kept in full force and effect during the term of this Agreement and, thereafter, until all financial obligations, reports or other requirements of the Agreement thereunder are satisfied, a surety bond or an irrevocable letter of credit, or other form of security acceptable to the Department and so endorsed as to be readily negotiable by the County for the payments required hereunder, in an amount equal to FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), plus any state sales taxes as may be applicable and required by law. Such performance bond shall be kept in full force throughout the term of this Agreement and any Extension Periods. The Department, without prior notice to the Operator, may draw upon such performance bond, given the Operator's failure to perform or breach of this Agreement. The Department may require the Operator to increase or decrease the amount of the performance bond during the term of this Agreement or any Extension Periods.

#### **10.02 Surety Bonds:**

- (a) All bonds shall be written through surety insurers authorized to do business in the State of Florida, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond Amount</u>	<u>Best Rating</u>
500,001 to 1,500,000	B- V
1,500,001 to 2,500,000	A-VI
2,500,001 to 5,000,000	A-VII
5,000,000 to 10,000,000	A-VIII
Over 10,000,000	A-IX

- (b) On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

1. Providing evidence that the surety has twice (2x) the minimum surplus and capital required by the Florida Insurance Code at the time the solicitation is issued.
2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code.
3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury ("Treasury") under 31 U.S.C. §§ 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the Treasury entitled "Surety Companies Acceptable on Federal Bonds". The bond amount shall not exceed the underwriting limitations as shown in this circular.

- (c) For contracts in excess of \$500,000, the provisions of this Sub-Article must be adhered to, plus the company must have listed for at least three (3) consecutive years, or holding a valid Certificate of Authority of at least \$1.5 million dollars on a Treasury list.
- (d) Surety bonds guaranteed through the Small Business Administration or Contractors Training and Development Inc., will also be acceptable.
- (e) The attorney-in fact or other officer who signs a contract company must file with such bond a certified copy of his power of attorney authorizing him to do so. The contract bond must be counter signed by the surety's resident Florida agent.

The required bonds shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425, Florida Statutes.

The bonds shall be delivered to the Department upon execution of the contract between the Operator and the County.

#### 10.03 **Cancellation of Bonds:**

Cancellation of any bonds, or non-payment of any premiums for any bonds required by this Agreement shall constitute a breach of this Agreement.

### **ARTICLE 11**

#### **Damage, Destruction, or Restriction to the Facilities**

#### 11.01 **Termination by the Operator:**

The Operator shall have the right, upon thirty (30) calendar days written notice to the Department to terminate this Agreement, without liability to the County, at any time after the occurrence of one (1) or more of the following events:

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the remaining in force of said injunction for a period of more than one hundred eighty (180) calendar days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the County to remedy such breach for a period of two hundred seventy (270) calendar days after receipt of written notice from the Operator of the existence of such breach.
- (C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the Airport premises or any substantial part, or parts thereof, in such a manner as substantially to restrict the Operator's operations for a period of one hundred eighty (180) calendar days.
- (D) Suspension of all scheduled passenger flight operations, whether such suspension is due to governmental action, an act of God, the public enemy, or other circumstances for a period of one hundred eighty (180) calendar days.
- (E) If the Facilities are rendered unfit for the use and purpose for which this Agreement is granted, without fault on the part of the Operator, its employees, agents, Contractors, subcontractors, vendors, or suppliers for a period of ninety (90) days.

## **ARTICLE 12**

### **No Assignment, Subletting or Sale of Controlling Interest**

#### **12.01 No Assignment:**

The Operator shall neither assign, transfer, pledge or otherwise encumber this Agreement, nor allow others to use the Facilities, without the prior written consent of the Department.

#### **12.02 Ownership Structure of the Operator:**

The Operator shall take no actions which shall serve to transfer or sell majority ownership, or change the management or control of the business entity of the Operator without the prior written consent of the Department.

#### **12.03 Change of Control:**

If Operator is a corporation, the issuance or sale, transfer or other disposition of a sufficient number of shares of stock in the Operator which results in a change of control of Operator, shall be deemed an assignment of this Agreement for purposes of this Article 12. If the Operator is a partnership, transfer of any interest in the partnership, which results in a change in control of the Operator, shall be deemed an assignment of this Agreement for purposes of this Article 12.

12.04 **Authority:**

If Operator signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Agreement on behalf of Operator does hereby covenant and warrant that (i) the Operator is a duly authorized and existing entity, (ii) the Operator has and is duly qualified to do business in State of Florida, (iii) the Operator has full right and authority to enter into this Agreement, and (iv) each and all of the persons signing on behalf of the Operator are authorized to do so. Upon the Department's request, the Operator shall provide the Department evidence reasonably satisfactory to the Department confirming the foregoing representations and warranties.

**ARTICLE 13**  
**Indemnification**

The Operator shall indemnify, defend, and hold harmless the County, including its successors and assigns, and its officers, employees, consultants, subconsultants, agents, bond trustees, and instrumentalities (collectively the "Indemnitees"), from any and all liability, loss, claim, damage or cost, including attorney's and expert fees and cost of defense, which the County or its officers, employees, consultants, subconsultants, agents, bond trustees, or instrumentalities may incur in whole or in part (i) out of any injury, loss, theft, damage or cost to any person or property while on or about the Facilities, or out of any condition on the Facilities, or out of any breach of any Agreement covenant, warranty or representation by Operator or persons acting under Operator, or from any act or omission anywhere by Operator or persons acting under Operator, or (ii) as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Operator or its employees, agents, servants, partners, principles, Contractors, vendors or suppliers, except to the extent caused directly by the negligent act or willful misconduct of County. The Operator shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's and expert fees which may issue thereon. This provision shall survive termination of this Agreement.

**ARTICLE 14**  
**Insurance**

14.01 **Insurance Required:**

Prior to execution of the Agreement by the County and commencement of the Agreement, the Operator shall obtain all insurance required under this Article and submit it to the Miami-Dade Aviation Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the term of the Agreement.

The limits for each type of insurance may be revised upon MDAD Risk Management's review and approval of the Operator's operations. Additional

types of insurance coverage or increased limits may be required if, upon review of the operations, the County determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Operator must show coverage has been obtained that meets the requirements and exact amount of coverage, as outlined below during the provision of Services at the Facilities:

- A. Workers' Compensation as required by Chapter 440, Florida Statutes, with no self-insured retention. Reimbursement for Worker's Compensation will be in accordance with Sub-Article 4.02, and all invoices must reflect the names and total number of employees being covered as part of the operations at Miami International Airport, by the Operator under this Agreement.

Operator will procure a separate standard policy for the MIA location, based upon the State of Florida rate modified by APA's experience which may change annually upon contract renewal based upon changes to the modifier.

- B. Comprehensive General Liability in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
- C. Automobile Liability Insurance covering all owned, non-owned, County-owned, and hired vehicles used in connection with this Agreement in an amount not less than \$1,000,000\* per occurrence for bodily injury and property damage combined.

\*Under no circumstances is the Operator allowed on the Airside Operation Area without increasing automobile coverage to \$5,000,000 as approved by MDAD Risk Management.

- D. Garage Keepers Legal Liability with respect to a departure valet service only in accordance to Sub-Article 2.03, in an amount not less than \$1,000,000 combined single limit per occurrence for damage to or theft of vehicles in the care, custody, and control of Operator, for which Operator is legally liable. Miami-Dade County must be shown as an additional insured with respect to this coverage.
- E. Fidelity Bond – Crime Insurance- \$1,000,000 Limit.

#### **14.02 Insurance Classifications:**

The insurance coverage required shall include those classifications as listed in Standard Liability Insurance Manuals, which most nearly reflect the operations of the Operator under this Agreement.

**14.03 Premium Invoices:**

The Operator shall provide copies of all premium invoices from the respective insurance carrier/broker, for all required policies under this Agreement. Said copies must show the premiums paid solely for coverage of Miami International Airport operations. Failure to provide such information is an event of default and subjects Operator to non-reimbursement for said premiums. No invoices for insurance will be approved for reimbursement without stamped approval by MDAD Risk management.

**14.04 Certificates of Insurance:**

The Operator shall furnish certificates of insurance to the County prior to commencing any operations under this Agreement, which certificates shall clearly indicate:

- a) the Operator has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article;
- b) the County is named as an additional insured; and
- c) no material change or cancellation of said insurance shall be effective without thirty (30) days prior written notice to the County. The County reserves the right to require the Operator to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to the Operator.

**14.05 Certificates of Renewal:**

The Operator shall furnish certificates evidencing renewal or replacement of required insurance coverage, thirty (30) days prior to expiration or cancellation. The Department reserves the right to reasonably amend the insurance requirements or to assume direct responsibility for carrying all or any of the required insurance coverage by the issuance of notice in writing to the Operator. In the event the Department exercises its right to assume direct responsibility for any of the required insurance coverage, the Operator shall be named as an additional insured, where applicable provided the Department does not self-insure. Compliance with the foregoing requirements shall not relieve the Operator of its liability and obligation under any other portion of this Agreement.

**14.06 Certificates of Continuity:**

The Operator shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the lease, including any and all option years, if applicable. If insurance certificates are scheduled to expire during the lease period, the Operator shall be responsible for submitting new or renewed insurance certificates to the MDAD

Risk Management Office at a minimum of thirty (30) calendar days before such expiration.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, or its equivalent, subject to the approval of the MDAD Risk Management.

Certificates will show that no modification or change in insurance shall be made without thirty (30) calendar days written advance notice to the certificate holder.

**14.07 Cancellation of Insurance:**

Cancellation of any insurance, or non-payment of any premiums for any insurance policies required by this Agreement shall constitute a breach of this Agreement.

**14.08 Other Insurance Indemnification:**

The Operator represents and warrants that any insurance protection required by this Agreement or otherwise provided by its contractors and subcontractors shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, consultants, agents and instrumentalities as herein provided.

**14.09 Operator Liable:**

Compliance with the requirements of this Article 14 shall not relieve the Operator from its liability under any other portion of this Agreement.

**14.10 Right to Examine:**

The Department reserves the right, and upon reasonable notice, to examine the original policies of insurance (including, but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Operator agrees to permit such inspection at the offices of the Department.

**14.11 Personal Property:**

Any personal property of the Operator, or of others, placed in the Facilities shall be at the sole risk of the Operator or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.



**14.12 Survival of Provisions:**

The provisions of this Article 14 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 15**  
**Trademarks and Licenses**

The County may, from time to time, permit the Operator to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the County in the Performance of this Agreement, which patents, copyrights, trademarks, trade names, logs computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Operator and the Department, on behalf of the County, granting the Operator the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. The County may likewise license from the Operator the use of certain trademarks which the Operator has previously created, without a requirement for the payment of any additional fees or compensation to the Operator for such license. Failure of the parties to execute a formal license agreement, shall not vest neither title nor interest in such patent, copyright, trademark, trade name, logo, computer software or intellectual property shall vest in the using party.

**ARTICLE 16**  
**Force Majeure**

Strictly in relation to the obligations of each party to the other under this Agreement and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by: (i) strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, provided however, this clause (i) does not apply to such actions related to employees, temporaries, Contractors, subcontractors or suppliers of the Operator; or (ii) embargo's, general shortages of labor, equipment, facilities, materials or supplies in the open market, acts of God, acts of a public enemy, acts of governmental authority, including, without limitation, the Federal Aviation Administration ("FAA"), Department of Transportation ("DOT"), Transportation Safety Administration ("TSA"), Environmental Protection Agency ("EPA"), civil and defense authorities, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

**ARTICLE 17**  
**Default and Termination by the County**

**17.01 Events of Default:**

A default shall mean a breach of this Agreement by the Operator (an "Event of Default"). In addition to those defaults defined in Sub-Article 17.02, Sub-Article 17.03, and Sub-Article 17.04, an Event of Default, may also include one (1) or more of the following occurrences:

- (A) Operator has violated the terms and conditions of this Nonexclusive Management Agreement;
- (B) Operator has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Operator's creditors, or the Operator has taken advantage of any insolvency statute or debtor/creditor law, or the Operator's affairs have been put in the hands of a receiver;
- (C) Operator has failed to obtain the approval of the County where required by this Agreement;
- (D) Operator has failed to provide reports, records, book of accounts, summaries, or audits as required by this Agreement;
- (E) Operator has failed to perform any covenant of this Agreement;
- (F) Operator has failed to provide adequate assurances as required under Sub-Article 17.06;
- (G) Operator has failed to comply with any provision of Article 18;
- (H) Operator has failed in a representation or warranty stated herein; or
- (I) Operator has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

**17.02 Payment Default:**

Either the failure of the Operator to deposit Gross Revenues as required under this Agreement, or the County drawing against the performance bond required pursuant to Sub-Article 10.01, shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) calendar days notice in writing to the Operator (the "Terminations Notice"), unless the default be cured within the notice period.

**17.03 Other Defaults:**

The County shall have the right, upon thirty (30) calendar days written notice to the Operator to terminate this Agreement upon the occurrence of any one (1) or more of the following unless the same shall have been corrected within such period:

- (A) Failure of the Operator to comply with covenants of this Agreement other than those that constitute default pursuant to Sub-Article 12.02.
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.

- (C) The entering by the Operator into any agreement, understanding, arrangement, or contract, whether written or oral, for the referral of customers or potential customers to off-Airport parking facilities.
- (D) The occurrence of any illegal act within the Facilities of which the Operator: (i) had prior knowledge, or could reasonably have been expected to have prior knowledge of; (ii) failed to correct; and (iii) failed to notify the Department and responsible authority(ies).

17.04 **Habitual Default:**

Notwithstanding the foregoing, in the event that the Operator has frequently, regularly or repetitively defaulted in the performance of or breach any of the terms, covenants and conditions required herein, to be kept and performed by the Operator, on five (5) occasions regardless of whether the Operator has cured each individual condition of breach or default as provided for in Sub-Article 17.02 and Sub-Article 17.03 above, the Operator shall be determined by the Director to be an "habitual violator". At the time that such determination is made the Department shall issue to the Operator a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Operator that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to the Operator, such termination to be effective upon the seventh (7th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Operator shall have no further rights hereunder. Immediately upon receipt of said termination, the Operator shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with Sub-Article 17.10 hereof.

17.05 **Notice of Default and Opportunity to Cure:**

If an Event of Default occurs, the Department shall notify the Operator (the "Default Notice"), specifying the basis for such default, and advising the Operator that such default must be cured immediately or this Agreement with the County may be terminated. The Operator can cure and rectify the default, to the Department's reasonable satisfaction, within thirty (30) days of actual notice of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the County's rights hereunder, so long as, the Operator has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the

Department prescribes. The Default Notice shall specify the date by when the Operator shall discontinue the services (the "Termination Date").

**17.06 Adequate Assurances:**

When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Operator's ability to perform the work or any portion thereof, the County may request that the Operator, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Operator's ability to perform in accordance with terms of this Agreement. In the event that the Operator fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- (A) treat such failure as a repudiation of this Agreement; and
- (B) resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

**17.07 Termination For Abandonment:**

Except as allowed pursuant to Article 16, this Agreement shall be automatically terminated in its entirety upon the abandonment by the Operator of the Facilities or the voluntary discontinuance of operations at the Airport for any period of time exceeding twenty four (24) hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order, or Act of God that prevents the Operator's use of the Facilities for the purposes authorized in Article 2.

**17.08 Termination For Cause:**

The County may terminate this Agreement, effective immediately if: (i) the Operator fails to cure an Event of Default during the Cure Period; (ii) an individual, firm, corporation, joint venture, or other entity attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; (iii) a principal of the Operator is convicted of a felony during the term of the Agreement or any Extension Period; (iv) as a result of governmental entity or law enforcement investigation, or other audit findings, Operator illegality is discovered; or (v) a second occurrence of the same type of Operator impropriety or misconduct.

The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County

debarment procedures. The Contractor may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code.

**17.09 Termination Without Cause:**

Any time during the initial term of this Agreement or extension thereof, the Operator upon one hundred-eighty (180) days advance written notice to the Department, and the Department upon thirty (30) days written notice to the Operator, may terminate this Agreement without stated cause or liability to the other party.

**17.10 Actions at Termination:**

In addition to any other requirements pursuant to Article 21, the Operator shall, upon receipt of such Termination Notice, and as directed by the Department:

- (A) stop all work on the Termination Date specified in the Termination Notice;
- (B) take such action as may be necessary for the protection and preservation of the Facilities and other County materials and property;
- (C) cancel orders, provided however, that the County shall reimburse Operator for all costs and expenses of such cancellation, provided that Operator has, within five (5) business days, advised MDAD in writing that there may be cancellation costs, and to the extent known, an estimate of amount of these costs;
- (D) assign to the County and deliver to any location designated by the County any noncancelable orders not incorporated in the work, provided however, that Operator will be compensated for such deliverables that have been specifically developed for the sole purpose of this Agreement;
- (E) vacate, quit and surrender, and account for the Facilities, support space, all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the Termination Date, with such items to be in as good order and condition as they were upon commencement of this Agreement or date of subsequent acquisition, reasonable and normal wear and tear excepted; and
- (F) remove all of its personal property from the Facilities, support space, on or before the Termination Date. Any personal property of the Operator not removed in accordance with this Sub-Article may be removed by the Department for storage at the cost of the Operator. Failure on the part of the Operator to reclaim its personal property within thirty (30) days from the Termination Date shall constitute a gratuitous transfer of title thereof to the County for whatever use and disposition is deemed to be in the best interests of the County.

**NOTE:** Any compensation paid pursuant to this Sub-Article is subject to audit.

**17.11 Remedies For County:**

Upon the termination of the Agreement based upon this Article 17, the Operator shall make a payment on the Termination Date, to the Department of the amount(s) equal to any monies due the Department under the Agreement. This payment is independent of and in addition to any payments, fees, and remedies available to the County under applicable law or this Agreement. The Operator shall indemnify and reimburse the Department within forty-five (45) days after the date of such termination, an amount equal to Department's costs for any damages to the Facilities, for failure to perform, or any other breach of the Agreement by the Operator. In the event the County exercises its termination right as provided hereunder, the County shall not be subject to any liability and shall have no further obligations under this Nonexclusive Management Agreement. The Operator shall also be liable to such other relief as the County may be entitled.

**17.12 Holdover Tenant:**

If the Operator (or anyone claiming through Operator) shall remain in possession of the Facilities or any part thereof after the termination of this Nonexclusive Management Agreement, without a written agreement executed by the County, then without limiting the County's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement, and the Operator shall thereafter pay on account of its holdover use and occupancy of the Facilities a sum, **at a rate equal to two times (2x) the amount payable monthly as Monthly Management Fee** (the "Holdover Charges"). The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Operator shall remain liable to the County for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the County on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the Term.

**ARTICLE 18**

**Nondiscrimination and Affirmative Action Programs**

**18.01 Employment Discrimination:**

The Operator shall ensure that all employees are able to enjoy a work environment free from all forms of discrimination, including harassment, on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status or sexual orientation. The Operator shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status or sexual orientation. Such actions shall include, but not be limited to the following: employment, upgrading, transfer or demotion,

recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Operator shall comply with applicable provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

**18.02 Nondiscriminatory Access to Service:**

The Operator does hereby covenant and agree: (1) no person on the grounds of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; (2) in furnishing of services hereunder, no person on the grounds of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) the Facilities shall be used in compliance with the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964.

**18.03 Breach of Nondiscrimination Covenants:**

In the event the Operator breaches the nondiscrimination covenants contained in Sub-Article 18.01 and Sub-Article 18.02 above, pursuant to the complaint procedures contained in the applicable federal regulations, and the Operator fails to comply with the sanctions and/or remedies which have been prescribed, the County may terminate this Agreement pursuant to Sub-Article 17.08.

The Operator agrees to include the above statements in any subsequent agreements that it enters with Contractors, subcontractors, vendors, and suppliers which contribute to the provision of the Services, and cause those businesses to similarly include the statements in further agreements.

**18.04 Affirmative Action and Procurement Programs:**

- (A) The Operator acknowledges that the provisions of 14 C.F.R. Part 152, Affirmative Action Employment Programs, are applicable to the activities of the Operator under the terms of this Agreement, unless exempted by said regulations. The Operator agrees to comply with all requirements of the Department, the FAA, TSA, and DOT. These requirements may include, but not be limited to (i) compliance with employment affirmative action participation goals, (ii) keeping of certain records of good faith compliance efforts which are be subject to review by the various agencies, and (iii) submission of various reports. In the event the Operator defaults in the requirement to comply with this Sub-Article, and the Operator

thereafter fails to comply with the respective sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Operator, to terminate this Agreement pursuant to Sub-Article 17.08.

**(B) Non-Discrimination Against Minorities And Women**

Entities with annual gross revenues in excess of \$5,000,000 have substantial workforces and purchase substantial amounts of goods and services, and discriminatory practices by such entities against minorities and women and against businesses owned by minorities and women can have substantial injurious impact. The Board of County Commissioners of Miami-Dade County wishes to assure that any such entities contracting with Miami-Dade County do not discriminate in their employment, promotional and procurement practices.

The Operator shall comply with this policy established by Miami-Dade County Ordinance No. 98-30. The Operator that has annual gross revenues in excess of \$5,000,000 agrees that as a condition of receiving a County contract: (1) it has a written affirmative action plan which sets forth the procedures the Operator utilizes to assure it does not discriminate in employment and promotion practices, (2) it has a written procurement policy which sets forth the procedures the Operator utilizes to assure it does not discriminate against minority and women owned businesses in its own procurement of goods, supplies, and services, and (3) that such plan and policies provides for periodic review to determine effectiveness in assuring the Operator does not discriminate in its employment, promotion and procurement practices. The Operator will provide copies of its written Affirmative Action plan and procurement policies upon County request.

Further, the Operator acknowledges that it has submitted an affirmative action plan which, is subject to approval by the County's Department of Business Development ("DBD"). The Operator shall undertake and perform the affirmative actions specified therein.

**ARTICLE 19**

**Rules and Regulations and Permits**

**19.01 Rules and Regulations:**

The Operator shall comply with: (i) the ordinances of the County including the rules and regulations of the Department; (ii) Chapter 25 of the Code; (iii) operational directives issued hereunder; (iv) all additional laws, statutes, ordinances, regulations and rules of the federal, state and local governments, and any and all plans and programs developed in compliance therewith; (v) any County administrative orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement; (vi) federal air and safety laws and regulations; and (vii) federal, state, and County environmental, hazardous wastes and materials, and natural resources laws and regulations.



**19.02 Violations of Rules and Regulations:**

The Operator represents and agrees to pay, on behalf of the County, any penalty assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, state or local governments based in whole or substantial part upon a claim or allegation that the Operator, its agents, employees, Contractors, subcontractors, suppliers, or invitees, have violated any law, ordinance, regulation or rule described in Sub-Article 19.01 or any plan or program developed in compliance therewith. Any such penalty, assessment, or fine shall not be a Reimbursable Expense. The Operator further represents that the substance of Sub-Article 19.02 and Sub-Article 19.01 shall be included in every contract and other agreements, which the Operator may enter into related to its operations and activities under this Agreement and that any such contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary, of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

**19.03 Permits and Licenses:**

The Operator covenants, represents, and warrants that it shall, at its sole cost and expense, be strictly liable and responsible to obtain, pay for, maintain current, fully comply with, and make available to the Department upon request, all permits, licenses, and governmental authorizations and approvals, however designated and as may be required, at any time during the term of this Agreement, by any federal, state, or County governmental entity or judicial body having jurisdiction over the Operator or its operations and activities, for any activity of the Operator on the Facilities and for any actions of the Operator at the Airport, including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from the Operator's operations and activities on the Facilities and Airport have been obtained and are in compliance.

**ARTICLE 20**  
**Civil Actions**

**20.01 Governing Law; Venue:**

This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any action or claim arising from this Agreement shall be in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court in and for the Southern District of Florida..

**20.02 Registered Office/Agent: Jurisdiction:**

The Operator, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034,

Florida Statutes. If the Operator is a natural person, both the Operator and his or her personal representative(s) hereby submit themselves to the jurisdiction of the courts of the State of Florida for any cause of action based in whole or in part on the alleged breach of this Agreement.

**ARTICLE 21**  
**Additional Actions at Termination**

**21.01 Compliance:**

On or before the termination date of this Agreement or any Extension Period thereof, the Operator shall comply with all requirements of Sub-Article 17.10.

**21.02 Vehicle Inventory:**

At termination of this Agreement, the Department shall take a vehicle inventory jointly with the Operator and shall assume responsibility for all vehicles then parked in the Facilities.

**21.03 Amounts Due and Payables:**

Upon termination of this Agreement, all amounts due and owed between the parties shall become immediately payable.

**21.04 Payment of Employees:**

Upon termination of this Agreement, the Operator shall pay all employees for all hours worked and for annual leave (vacation time) accrued, but not used during the period covered by this Agreement.

**ARTICLE 22**  
**Other Provisions**

**22.01 General Change Fund:**

The Operator shall establish and fund in a sufficient amount, a General Change Fund to be used for maintaining cashier change funds.

**22.02 Cash Losses:**

All cash losses shall be the responsibility of and be reimbursed by the Operator. All incidents must be reported to the Department immediately.

**22.03 Payment of Taxes:**

The Operator shall pay any taxes lawfully assessed against the Operator, arising out of its operations hereunder, provided, however, that the Operator shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes, where such taxes are not delinquent, pending the outcome of any legal

proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute a default, pursuant to Sub-Article 17.03.

**22.04 No Possessory Interests:**

No clause, phrase, sentence, paragraph or article of this Agreement shall vest any possessory or leasehold interest in any real property, the Facilities, improvements, or the personal property of the County described herein on the Operator; or shall such be construed as creating any landlord and tenant, partnership, or joint venture relationship between the County and the Operator.

**22.05 Administrative Modifications:**

It is understood and agreed that the Department, upon written notice to the Operator, shall have the right to modify administratively and to revise the budget, revenue processing, reimbursement, replenishment and payment procedures, contained in Article 3 and Article 4, other technical requirements hereof, and the exhibits hereto, provided, however, such revisions shall not have a materially adverse effect on the right of the Operator to be reimbursed for costs and expenses incurred on a timely basis, or to receive reasonable compensation for its services hereunder, or on the security of the funds and assets of the County. Further, it is understood and agreed that Exhibit H to this Agreement may be administratively revised by the Department, upon written notice to the Operator.

**22.06 Approvals:**

Whenever in this Agreement, approval by the County or Department is required, the County or the Department may approve or disapprove same without providing a stated cause for such action.

**22.07 Required Disclosure Affidavits with Applicable Ordinances and Resolutions:**

**A. Drug Free Work Place Certification**

The Operator acknowledges, that as part of its Proposal, it provided to the County a Drug Free Workplace Affidavit, certifying that it is providing a drug free workplace for its employees, as required by Section 2-8.1.2 of the Code, as amended by Miami-Dade County Ordinance No. 00-30. The County shall have the right, upon thirty (30) days written notice to the Operator, to terminate this Agreement in the event the Operator fails to provide, as of each anniversary of the effective date of this Agreement, the annual re-certification affidavit as required. Failure to comply with this policy may result in debarment of the Operator, for knowingly violating this policy or falsifying information.

**B. Family Leave Program Certification**

Pursuant to Miami-Dade County Resolution No. R-183-00 amending Resolution No. R-1499-91, Operator shall, as a condition of award, provide

written certification that the firm, entity, or joint venture provides family leaves to their employees as required by the County Family Leave Ordinance. Failure to provide the required certification shall preclude the Operator from receiving the contract. Any violation of this ordinance may result in debarment. The County shall have the right to terminate this Agreement, upon thirty (30) days advance written notice to the Operator, in the event the Operator fails to provide, as of each anniversary of the effective date of this Agreement, an annual recertification affidavit that it is providing and will continue to provide such family leave program

**22.08 Right to Modify:**

The parties hereto covenant and agree that, during the Term hereof, this Agreement may be unilaterally modified by the Department in order to conform to judicial, Federal Trade Commission, FAA, TSA, or DOT rulings or opinions. This Sub-Article shall not preclude Operator from contesting said rulings or opinions, but Operator shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

**22.09 Rights to Amend:**

In the event that the FAA or its successor requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, the Operator hereby consents to any and all such modifications and changes as may be reasonably required.

**22.10 Federal Subordination:**

This Agreement shall be subordinated to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

**22.11 Notices:**

Any notices given under the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested to:

TO THE COUNTY:

Director  
Miami-Dade County Aviation Department  
Post Office Box 025504  
Miami, Florida 33102-5504

TO THE OPERATOR:

Central Parking Corporation  
2401 21st Avenue South  
Suite 200  
Nashville, TN 37212  
Attn: Emanuel Eads  
President and CEO

With a Courtesy Copy to:

Airport Parking Associates  
2 South Biscayne Boulevard  
Suite 200  
Miami, FL 33131  
Attn: Jason Finch  
Regional Manager

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by registered or certified mail shall be deemed given on the delivery date indicated on the return receipt from the United States Postal Service.

22.12 **Severability:**

If any of the provisions of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not effect other provisions of this Agreement which can be given effect without the valid provision, and to this end, the provisions of this agreement are severable.

22.13 **Authorized Uses Only:**

Notwithstanding anything to the contrary herein, the Operator shall not use or permit the use of the Facilities or the Airport for any illegal or unauthorized purpose, nor for any purpose which would invalidate any insurance policies of the County or any policies of insurance written on behalf of the Operator under this Agreement.

22.14 **No Waiver:**

There shall be neither a waiver of the right of the County to demand strict performance of any of the provisions, terms and covenants of this Agreement, nor shall there be any waiver of any breach, default or non-performance hereof the

Operator, unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the County to demand strict performance of the provisions, terms or covenants of this Agreement with respect to any subsequent event or occurrence or of any subsequent breach, default or non-performance hereof the Operator.

22.15 **Right of Regulate:**

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Operator or its operations.

22.16 **Entire Agreement:**

This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that the Operator hereby affirms the completeness and accuracy of the information submitted by the Operator to the Department in connection with the award of this Agreement.

22.17 **Inspections:**

The authorized employees and representatives of the County and of any applicable federal or state agencies having jurisdiction hereof shall have the same right of access to the Facilities at reasonable times for the purposes of inspection and audit to determine compliance with the provisions of this Agreement. The right of inspection and audit shall impose no duty on the County to inspect and audit, and shall impart no liability upon the County should it not make any such inspections or audits.

22.18 **Headings:**

The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents, are for the convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

22.19 **Binding Effect:**

The terms, conditions and covenants of this Agreement shall endure to the benefit of and be binding upon the parties hereto and their successors and assigns.

22.20 **Performance:**

The parties expressly agree that time is of the essence in the performance of this Agreement and that the failure of the Operator to complete performance within

the time specified, or reasonable time if no time is specified herein, shall relieve the County of any obligation to accept such performance.

**22.21 Living Wage:**

The Operator shall comply with Section 2-8.9 of the Code of Miami-Dade County, Miami-Dade County Ordinance No. 99-44, and Administrative Order No. 3-30. The Operator shall (i) pay its covered employees the applicable hourly living wage rate, with or without health benefits, and (ii) comply with the administrative and records keeping required. The Operator shall also ensure that its Contractors and subcontractors comply with this Sub-Article.

**22.22 Non-Exclusive Management Agreement:**

Nothing contained within this Agreement shall be construed to create a landlord-tenant relationship between the Department and the Operator.

**22.23 Proposal Incorporated:**

The Operator acknowledges that it has submitted to the County a proposal that was the basis for the award of this Agreement and upon which the County relied.

**22.24 Security Requirements:**

MDAD shall have the right to add, amend or delete any portion hereof in order to meet reasonable security requirements of MDAD, Customs and Border Patrol ("CBP"), or the TSA. The Operator shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate federal agencies may require.

Operator agrees that it will include in all agreements with its Contractor(s), an obligation by such parties to comply with all security requirements applicable to their operations at MIA. Operator agrees that in addition to all remedies, penalties and sanctions that may be imposed by MDAD, CBP, or TSA upon the Operator's Contractor(s) and its individual employees for a violation of applicable security provisions, the Operator shall be responsible to MDAD for all such violations and shall indemnify and hold MDAD harmless for all costs, fines and penalties arising there from, which shall include reasonable attorneys' fees.

The Operator shall be responsible for the security and protection of the Facilities, and the equipment, furnishings, commodities, and supplies provided herein

**22.25 Alteration of Facilities and Erection of Signs:**

The Operator shall neither, alter the Facilities, erect any signs, nor permit any advertising of any nature, without prior written approval from the Department.

**22.26 Remedies:**

All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder. The failure to assert a remedy shall not be deemed a waiver of that remedy.

**22.27 Interest:**

Any sums payable to the Department by the Operator under any provisions of this Agreement which are not paid when due shall bear interest at the rate of one and one-half percent (1½%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.



IN WITNESS WHEREOF, the County has hereto caused this Agreement to be issued and executed by its appropriate officials, which the Agreement by its execution by its appropriate officials hereby accepts, as of the date first above written.

BOARD OF COUNTY COMMISSIONERS  
OF MIAMI DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor

Attest: Harvey Ruvin, Clerk

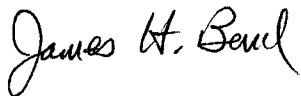
By: \_\_\_\_\_  
Deputy Clerk

(COUNTY SEAL)

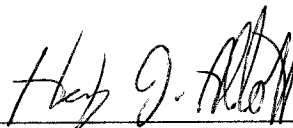
**AIRPORT OPERATOR:**

Airport Parking Associates

By: **Central Parking System of Florida, Inc.** - Partner

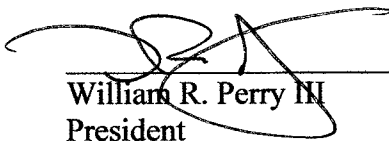


James H. Bond  
President



Henry J. Abbott  
Secretary

By: **WRP & Associates, Inc.** - Partner

  
William R. Perry III  
President

**WITNESSES TO ABOVE SIGNATURE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name